



**MINUTES OF A SPECIAL WORKSHOP OF THE  
UPLAND PLANNING COMMISSION HELD  
WEDNESDAY, JUNE 10, 2020  
AT 6:30 P.M.**

**CALL TO ORDER OF THE PLANNING COMMISSION REGULAR MEETING**

*Chair Aspinall* called the Special Workshop of the Upland Planning Commission to order and due to the meeting being conducted through Zoom was off-site of the Council Chambers of the Upland City Hall at 6:33 P.M.

**PLEDGE OF ALLEGIANCE**

The pledge of allegiance was led by *Commissioner Novikov*.

**ROLL CALL**

MEMBERS PRESENT: Commissioners Anderson, Mayer, Novikov, Shim, Walker, Vice Chair Schwary, and Chair Aspinall

MEMBERS ABSENT: None.

ALSO PRESENT: Development Services Director and Planning Commission Secretary Dalquest, Associate Planner Winter, City Attorney Flower, Senior Administrative Assistant Davidson

This Planning Commission meeting was conducted pursuant to the Governor's Executive Order N-29-20 which suspended certain requirements of the Brown Act. The Planning Commission Chair and members of the Commission were present via videoconference and the public was able to observe the meeting via live stream on the City's website or on the public access cable channels. Public comment was taken via telephone.

**ORAL COMMUNICATIONS**

*Chair Aspinall* stated this is the time for any citizen to comment on any items that are not listed on the agenda under "Public Hearings" but within the Planning Commission's purview. Anyone wishing to address the Planning Commission should submit a speaker card to the Planning Secretary prior to speaking. The speakers are requested to keep their comments to five (5) minutes. The use of visual aids will be included in the time limit. Under the provisions of the Brown Act, the Planning Commission is prohibited from acting on items not listed on the agenda.

Noting there were no members of the public wishing to address the Commission, *Chair Aspinall* closed the oral communications.

**WORKSHOP**

**1. Proposed Wireless Telecommunication Regulations**

*Development Services Director Dalquest* introduced the item, and indicated due to the length of the draft ordinance, staff felt it would be beneficial to conduct a workshop prior to the public hearing scheduled for the June 24<sup>th</sup> regular Planning Commission meeting.

*Associate Planner Winter* presented the details of the proposed wireless telecommunications ordinance, including the types of telecommunications facilities and characteristics; small cell facilities and 5G; factors driving deployment; and types of entities deploying wireless.

*City Attorney Flower* spoke about the regulatory background, including State and Federal regulations related to telecommunications facilities and local control; the Federal Telecommunications Act of 1996; consideration of radio frequency (RF) emissions; zoning regulation prohibitions; the Spectrum Act/The Middle Class Tax Relief and Job Creation Act of 2012; State laws regarding telecommunications in the right-of-way; time, place, and manner

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restrictions; FCC report and order establishing new categories for “small wireless facilities”; requirements for local regulations of small wireless facilities; local fee limits; “safe harbor fees”; and current legal challenge to the FCC order.

*Vice Chair Schwary* spoke about past public comments received, where concerns were expressed related to the potential negative effects cell towers can have on the health of surrounding residents. He reiterated that the City is restricted by federal law from denying applications for wireless telecommunications sites on the basis of potential health effects, and inquired as to how the City could get around these regulations to be able to take the public’s concerns into consideration.

In response to *Vice Chair Schwary’s* inquiry, *City Attorney Flower* indicated that the law is restrictive on local discretion related to public health concerns. He indicated the issue of RF emissions is not a part of the current legal challenge and that the current legal challenge only relates to small cell facilities.

*Commissioner Walker* inquired whether the City is able to file an amicus brief contingent upon the determination of the current legal challenge to defer any final decision until after the challenge resolved.

In response to *Commissioner Walker’s* inquiry, *City Attorney Flower* indicated that the matter has been fully briefed before the 9<sup>th</sup> circuit and there is no longer an opportunity to file an Amicus Brief. He also indicated that other cities already involved are representing the same legal interests as the City of Upland and indicated that it is in the best interest of the City to continue to follow federal laws regarding small cell facilities. He indicated the City has already adopted code amendments and policies to govern small cell sites, and that if this ordinance is adopted, it would supersede previous amendments.

*Commissioner Walker* inquired as to the time frame from submittal of the application to Planning Commission decision.

In response to *Commissioner Walker’s* inquiry, *City Attorney Flower* indicated the City has 60 days to approve modifications or colocations; 90 days for small cell sites; and up to 150 days for a new macro structures.

*Development Services Director Dalquest* added that the clock begins once the application is deemed complete. He also spoke briefly about the submittal requirements staff must review during that period.

*City Attorney Flower* also spoke about the application and review process, including the time frame for staff to respond to the applicant, before the submittal may be deemed complete.

*Commissioner Walker* inquired whether there are any existing applicants for this infrastructure and if there is a time limitation to draft and adopt this ordinance.

In response to *Commissioner Walker’s* inquiry, *Development Services Director Dalquest* indicated there is currently one (1) small cell facility that has been incomplete for some time, as well as two (2) cell towers that are waiting for the ordinance to be completed. He indicated once the ordinance is in effect, the Department will be processing a CUP for a cell tower at Memorial Park and a colocation at Flowers Field. He also spoke about the history of the ordinance, as directed by the Council.

*City Attorney Flower* indicated that without an updated ordinance, the City is unable to exert as much control as it could over cell sites.

*Chair Aspinall* inquired whether the City is at any risk for litigation from the applicants who are currently waiting for the passage of an ordinance.

In response to *Chair Aspinall’s* inquiry, *Development Services Director Dalquest* indicated that one (1) of the applications is still considered incomplete; staff is currently working on the lease for the site proposed at Memorial Park; and the other application for Flowers Field was recently submitted.

*Commissioner Walker* inquired whether the City is still able to process applications without an ordinance.

In response to *Commissioner Walker’s* inquiry, *City Attorney Flower* indicated that oftentimes wireless companies

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are usually patient to wait and see what transpires if they know an ordinance amendment is coming forward. However, without ordinances, the City cannot apply any aesthetic standards and indicated that the sooner the City adopts updated regulations, the better.

*Commissioner Walker* expressed concern for timing with regards to expiring terms and including new perspectives in crafting the ordinance if it is not completed prior to the turnover.

In response to *Commissioner Walker's* inquiry, *Development Services Director Dalquest* indicated that the item is scheduled to be heard on June 24<sup>th</sup> and the current Planning Commission that is in place will hear the item and make a recommendation to Council.

*Chair Aspinall* inquired whether there is any conflict with what was adopted previously and what is being proposed now. She also requested clarification on the ordinance approval process.

In response to *Chair Aspinall's* inquiry, *City Attorney Flower* indicated the ordinance is designed to supersede the resolution, as such, the resolution would no longer be in effect if the ordinance is adopted. He also noted that the ordinance is updated, but the same basic regulations will still be in place.

In response to *Chair Aspinall's* inquiry, *Development Services Director* clarified the adoption process and indicated that as the ordinance is a legislative decision, the Planning Commission action would be to make a recommendation to the City Council.

*Associate Planner Winter* spoke about the key elements of the proposed wireless telecommunications ordinance, including permit application requirements; zone and location requirements; design and development standards; Conditions of Approval; operations and maintenance standards; findings; and provisions for permit expiration, and revocation, cessation, and abandonment.

*Commissioner Anderson* expressed concerns for dense residential areas with regards to cell coverage.

In response to *Commissioner Anderson's* inquiry, *Associate Planner Winter* indicated that towers are prohibited in residential areas, and cell companies oftentimes look for parks and similar areas to address gaps in cell coverage.

*City Attorney Flower* indicated that even if zoning allowed, oftentimes due to the size of the footprint, cell companies have a difficult time finding a location to install towers. He also spoke about requirements the City built in to the ordinance for circumstances allowing small cell facilities in residential areas.

*Commissioner Anderson* inquired as to any stipulations to maintenance requirements for camouflage around the cell sites.

In response to *Commissioner Anderson's* inquiry, *Associate Planner Winter* indicated there are maintenance requirements, follow-up checks and enforcement on cell tower camouflage.

*Commissioner Mayer* inquired as to the hierarchy of ideal locations for the cell sites.

In response to *Commissioner Mayer's* inquiry, *City Attorney Flower* indicated that location preference is more a matter of aesthetic control rather than RF.

*Development Services Director Dalquest* spoke about operations and maintenance standards as outlined in the proposed draft ordinance.

*City Attorney Flower* clarified that the provisions applies to the small cell sites, where there isn't discretionary control over to look at the sites on a case-by-case basis.

*Commissioner Mayer* requested clarification on provisions for allowing cells in residential areas.

In response to *Commissioner Mayer's* inquiry, *Development Services Director Dalquest* spoke about eligible facility requests with regards to colocation. He also spoke about the criteria in the FCC standards which define eligible facility requests.

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*Commissioner Mayer* inquired as to how many towers the City has in residential zones.

In response to *Commissioner Mayer's* inquiry, *Development Services Director Dalquest* indicated there are very few cell towers in residential areas, if any, but more than likely there are none.

Discussion ensued related to the history of the cell tower at St. Anthony.

*City Attorney Flower* explained that if there is an existing site in a residential zone area, the eligible facility request is permitted by right.

*Commissioner Mayer* inquired as to the process for selecting cell sites and staff's qualifications for reviewing them.

In response to *Commissioner Mayer's* inquiry, *Development Services Director Dalquest* explained the process for identifying areas and justifications the applicants must make. He also indicated the ordinance provides provisions for hiring experts should that knowledge and expertise be needed.

*City Attorney Flower* also added that the ordinance also requires the applicant to pay for the cost of the third party consultant, should the services be needed.

*Commissioner Mayer* inquired as to the hierarchy as it relates to new towers not being placed within 200 feet within a residential zone.

In response to *Commissioner Mayer's* inquiry, *Development Services Director Dalquest* indicated that cell companies are outright prohibited from placing a new site within 200 feet of a residential zone, however, should the applicant show the necessity, the applicant may provide a justification for placement.

*Commissioner Mayer* requested renderings of the small cell facilities.

In response to *Commissioner Mayer's* inquiry, *Development Services Director Dalquest* provided a description of the small cell facilities, including dimensions.

*Vice Chair Schwary* inquired as to legal restrictions for extending the 200 feet boundary from residential zones.

In response to *Chair Schwary's* inquiry, *City Attorney Flower* indicated there is no statute that specifies the 200 feet boundary, instead the line around residential areas is a policy decision based on suggestion.

*Commissioner Walker* inquired whether the City has a third party consultant who is available to either confirm or challenge gaps of coverage. She also inquired as to the potential impacts of increasing the distance from residential areas to existing structures.

In response to *Commissioner Walker's* inquiry, *Development Services Director Dalquest* indicated that the City does not currently maintain a list of consultants, however, it is at staff's discretion to obtain consultants. He also indicated that each placement is evaluated on a case-by-case basis, and provided examples.

Discussion ensued related to existing towers and existing, legal non-conforming rights, should new structures be introduced as a result of extended distance requirements.

*Development Services Director* spoke about the history of the item, noting the Council Advisory Committee heard the item previously, and were all supportive of the ordinance.

*Associate Planner Winter* spoke about the one (1) change the Council Advisory Committee had to the draft ordinance as it related to towers on city property. He indicated that it was their recommendation to codify how a cell tower can be approved on city property, and outlining the lease process.

*Chair Aspinall* opened oral communications.

*Senior Administrative Assistant Davidson* indicated that staff made multiple attempts to contact the speaker by phone and email and were unable to make contact.

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*Development Services Director Dalquest* made a corrections to the hierarchy as noted on page 27 of the draft ordinance.

*Chair Aspinall* also noted a correction to page 2 of the draft ordinance in relation to the numbering.

*Development Services Director Dalquest* spoke about next steps in the process.

**COMMISSION COMMUNICATION**

*Chair Aspinall* spoke about the expiring terms of *Commissioner's Novikov* and *Walker* and the recent appointment of one (1) new Planning Commissioner by the City Council at their previous meeting. She requested that *City Attorney Flower* provide an explanation of the Planning Commission's role in the transition and appointment of new Commissioners.

In response to *Chair Aspinall's* request, *City Attorney Flower* explained that the City Council is the deciding authority for appointing Planning Commissioners.

*Commissioner Anderson* requested clarification in regard to Planning Commission term provisions, as set forth by the City Council.

In response to *Commissioner Anderson's* inquiry, *Vice Chair Schwary* explained his understanding of the approval process for consecutive terms. He also spoke about his history of appointments and confirmation by Council and spoke about the opinions of the Council to have rotation and term limits on the Commission.

*Commissioner Novikov* requested clarification on the process for consideration of candidates for the Planning Commission.

In response to *Commissioner Novikov's* inquiry, *City Attorney Flower* indicated that as a matter of law, the Government Code notes appointments are subject to approval by the City Council, the City Council adopted a Resolution that sets forth a process with a subcommittee formed for purposes of conducting interviews, and can use any criteria they wish to use to evaluate and confirm appointments.

*Commissioner Walker* inquired as to availability of the video stream of the meeting.

In response to *Commissioner Walker's* inquiry, *Senior Administrative Assistant Davidson* indicated the videos are archived and available the next day on the City's website.


*Chair Aspinall* permitted public comment on the previous Workshop.

*Natasha Walton*, resident, spoke about the importance of maintaining open spaces in the City. She expressed concern with cell phone towers in recreational spaces. She also spoke about the current cell phone tower and related lease at the Skate Park, and limitations for further recreation development as a result of the cell tower location. She recommended the City consider shorter term leases on cell tower sites and consider placing the towers on private property away from residences and open space. She also expressed concern with potential crowding at Memorial Park and future technology changes.

**ADJOURNMENT**

There being no further business to come before the Planning Commission, *Chair Aspinall* adjourned the meeting at 8:00 P.M., to the regular meeting of the Planning Commission on June 24, 2020, at 6:30 P.M.

Respectfully submitted,

  
Robert D. Dalquest, Secretary  
Upland Planning Commission